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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,782	12/07/2005	Nikolai Korpan	66376-366-7	3961
25769 7590 09/03/2009 DYKEMA GOSSETT PLLC FRANKLIN SQUARE, THIRD FLOOR WEST 1300 I STREET, NW WASHINGTON, DC 20005				
EXAMINER				
BURK, CATHERINE E				
ART UNIT		PAPER NUMBER		
3735				
MAIL DATE		DELIVERY MODE		
09/03/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/553,782

**Applicant(s)**

KORPAN ET AL.

**Examiner**

CATHERINE E. BURK

**Art Unit**

3735

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-14, 16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-14, 16 and 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 30 January 2009.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office action is in response to the Amendment filed on March 19<sup>th</sup>, 2009. The examiner would like to acknowledge the amendment to claim 12 and the cancellation of claims 15 and 17. Claims 12-14, 16, and 18-22 are pending.

#### ***Specification***

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

2. The disclosure is objected to because of the following informalities:

Page 3, 3<sup>rd</sup> paragraph, lines 3-4; applicant states "magnetic north pole of the first magnet faces towards the first housing wall and the magnetic south poles of the first magnet face towards the housing wall." Disclosure should read "magnetic north pole of the central further magnet faces towards the first housing wall and the magnetic south poles of the first magnet face towards the housing wall."

Page 5, paragraph beginning "The apparatus of Fig. 1..." line 4; applicant writes "are arranged on the rotor 6". Disclosure should read "are arranged on the rotor 4".

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12-14, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Ishikawa (US 6123657 A).
5. Claims 12, 14, 18, and 19; figure 4a shows a housing -1- with a first housing wall having an outer surface for placing against the body to be treated -6- (col. 5, lines 35-37). Within the housing is a rotor -2- that rotates about an axis perpendicular to the first housing wall. A plurality of projections -7b- extending from a magnetic member form a plurality of first magnets and are mounted on the rotor via holding member -3a- (col. 6, lines 5-26). The first magnets are mounted on the rotor along a plurality of imaginary radial rays such one first magnet precisely is arranged along each ray (claim 18). The rays extend opposite from one another, or in other words, the rays have an angular distance from one another of  $180^\circ$  (fig. 4b). The magnetic fields of the first magnets are oriented in the same direction, parallel to the rotational axis of the rotor, such that the N-poles face the first housing wall. There is also at least one further magnet -8b- substantially coaxial to the rotational axis of the rotor but oriented in an opposite direction relative to the first magnets (claim 12) and attached in the central region of the rotor (claim 14) (fig. 4a and b). The first magnets and the further magnet(s) comprise pole faces that lay in a common plane directly adjacent the first housing wall (claim 19) (fig. 4a).
6. Claim 13; the further magnet is attached to the rotor in a stationary manner. A magnetic holding member -3b- is molded integrally with the further magnet (col. 6, lines 11-16) such that the magnet only moves when the rotor moves and can not move independently. Since the magnet is attached to the holding member, and the holding

member is part of the rotor which is attached to the housing, the further magnet is attached to the housing in a stationary manner.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa.

9. In the embodiment disclosed by Ishikawa above, the device comprises two first magnets. However, Ishikawa discloses other embodiments comprising more than two first magnets, such as shown in fig. 32 (col. 14, lines 31-35). While fig. 32 illustrates an embodiment with eight magnets, any number of magnets is within the scope of the invention, such as three. Furthermore, in this embodiment the magnets are arranged symmetrically around the rotation axis. It is also known that a circle divided into three even segments results in segments that are 120°. It would have been obvious to one of ordinary skill in the art at the time of the invention that if three first magnets are mounted on the rotor, then the angular distances between the rays on which the magnets are disposed should be 120° because this would provide for radial symmetry of the magnets about the rotational axis of the device.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa in view of Miyazaki (2002/0115903 A1).

11. Ishikawa discloses that the rotor is driven by a drive motor which can be set to different speeds (col. 5, lines 23-28) but is silent as to whether the rotor can be set to different rotational directions. However, Miyazaki discloses a magnetic therapy device comprising a rotor -18- which is driven by a drive motor -16- which can be set to different rotational directions [0047]. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the ability to change rotational direction on the rotor disclosed by Ishikawa, similar to the rotor taught by Miyazaki, because both speed and direction contribute to the resulting magnetic field that is delivered to the patient.

12. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa in view of Souder (US 6001055 A).

13. Claims 21 and 22; Ishikawa discloses the first magnets and the further magnet are high in magnetic permeability and saturation magnetization (col. 6, lines 22-24) but is silent toward further characteristics of the magnets. However, Souder discloses a magnetic therapy device comprising magnets that are mounted to a rotor and brought into contact with a patient (fig. 5 and 12). Souder also discloses permanent or electromagnets are suitable for the present invention (claims 21 and 22) (col. 10, lines 3-6). It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the first and further magnets of Ishikawa's invention as either

permanent or electromagnets, as taught by Souder, because both permanent magnets and electromagnets are capable of exhibiting high magnetic permeability and saturation magnetization, which are the qualities disclosed by Ishikawa as necessary for the first and further magnets. Furthermore, Souder discloses both permanent and electromagnets are suitable for eliciting a therapeutic response in the human body.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERINE E. BURK whose telephone number is (571) 270-7130. The examiner can normally be reached on Monday-Thursday 8:30 AM - 7:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Marmor, II/  
Supervisory Patent Examiner  
Art Unit 3735

/C. E. B./  
Examiner, Art Unit 3735